

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ARTHUR SUMERLIN,

Petitioner,

Civil No. 09-CV-10459

Honorable George Caram Steeh

v.

BLAINE LAFLER,

Respondent.

_____/

**ORDER DENYING PETITIONER'S MOTION FOR
CERTIFICATE OF APPEALABILITY [dkt. # 17] BUT GRANTING
PERMISSION TO PROCEED ON APPEAL IN FORMA PAUPERIS**

Before the court is Petitioner's motion for a certificate of appealability. On June 6, 2011, this court denied Petitioner's application for habeas corpus relief, finding in part that some of Petitioner's claims were barred by his procedural default in the state courts. Petitioner did not attempt to appeal this decision, but instead, he filed a motion for relief from judgment, arguing that his claims were not defaulted. This Court denied the motion on July 23, 2013. Petitioner seeks permission to appeal this decision to the Court of Appeals.

A habeas petitioner is required to obtain a certificate of appealability before he can appeal the denial of a 60(b) motion for relief from judgment which seeks to challenge the judgment in a habeas case. *See United States v. Hardin*, 481 F. 3d 924, 926 (6th Cir. 2007). To obtain a certificate of appealability, a prisoner must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2), which the United States Supreme Court has construed to mean that an applicant must show that reasonable jurists

could debate that the petition could have been resolved differently or that the claims raised deserved further review." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

Reasonable jurists would not conclude that the issues raised in Petitioner's motion for relief from judgment deserve further review. As explained in the order denying that motion, Petitioner's motion for relief from judgment filed in the state trial court was denied on procedural grounds when the trial court specifically relied on Michigan Court Rule 6.508(d)(3) in denying relief. Petitioner's motion does not explain how the Court's analysis is open to debate among reasonable jurists. Therefore, a certificate of appealability is DENIED.

The standard for obtaining IFP status is less burdensome. A court may grant IFP status if the Court finds that an appeal is being taken in good faith. See 28 U.S.C. § 1915(a)(3); Fed. R.App.24 (a); *Foster v. Ludwick*, 208 F. Supp. 2d 750, 765 (E.D. Mich. 2002). Although the court finds that Petitioner's substantive arguments have no merit, this Court does not find that petitioner's appeal was not undertaken in good faith and will grant his request for leave to appeal in forma pauperis.

Based upon the foregoing, IT IS ORDERED that a certificate of appealability is DENIED.

IT IS FURTHER ORDERED that the motion for leave to appeal in forma pauperis is GRANTED.

Dated: October 31, 2013

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on October 31, 2013, by electronic and/or ordinary mail and also on Arthur Sumerlin #498164, Ryan Correctional Facility, 17600 Ryan Road, Detroit, MI 48212.

s/Barbara Radke
Deputy Clerk